

**BEFORE THE
FEDERAL MARITIME COMMISSION**

DOCKET NO. 15-11

IGOR OVCHINNIKOV, IRINA RZAEVA, and DENIS NEKIPELOV,

— vs. —

**MICHAEL HITRINOV a/k/a
MICHAEL KHITRINOV,
EMPIRE UNITED LINES CO., INC., and CARCONT, LTD.**

INFORMAL DOCKET NO.: 1953(I)

KAIRAT NURGAZINOV,

— vs. —

**MICHAEL HITRINOV a/k/a
MICHAEL KHITRINOV,
EMPIRE UNITED LINES CO., INC., and CARCONT, LTD.**

**COMPLAINANTS’ MOTION FOR LEAVE TO FILE SUR-REPLY TO
RESPONDENTS’ MOTION FOR JUDGMENT ON THE PLEADINGS**

Pursuant to Rules 69 and 70 of the Federal Maritime Commission’s (the “Commission”) Rules of Practice and Procedure (46 C.F.R. 502 *et seq.*), Complainants, through their Counsel, Marcus A. Nussbaum, Esq. respectfully submit this Motion For Leave to file a Sur-Reply to Respondents’ Motion For Judgment on the Pleadings.

“EXTRAORDINARY CIRCUMSTANCES” WARRANT COMPLAINANTS’ REPLY

Pursuant to 46 C.F.R. § 502.70, as adopted by Rule 70 of the Commission’s Rules of Practice and Procedure (“CRPP”), a non-moving party may file a “further reply” to a dispositive motion “...upon a showing of extraordinary circumstances.” It is respectfully submitted that as set

forth below extraordinary circumstances exist herein which warrant the granting of leave to Complainants to interpose a Sur-Reply to Respondents' Motion for Judgment on the Pleadings now pending before the Presiding Officer.

In the first instance, the Respondents have annexed various documents to their Reply brief (included within Respondents' Appendices "A" through "D") which have been produced for the first time in this litigation and were not originally annexed to Respondents' Motion for Judgment on the Pleadings. These documents purport to be invoices, the source of which have not been identified by Respondents, wherein Respondents now use them to argue *for the first time* that there are "discrepancies" between these invoices and those produced by Complainants. Respondents further argue that based upon these newly produced documents that it "...appears that Complainants must first stand in line to establish priority of purchase before going after the real villain – Mr. Kapustin."

It is respectfully requested that the Presiding Officer grant Complainants leave to address *these newly raised arguments* and documents produced *for the first time*, at which time Complainants intend to brief the Presiding Officer on the details as to the "discrepancies" that Complainants have uncovered with respect to these documents, to wit: evidence of alteration and manipulation of these documents; mismatch of dates and names between the original foreign language invoices and the English translations (one of which is dated "12/218/2012" when no such date exists on the standard "Gregorian" calendar -- and the Russian language invoice for Complainant Irina Rzaeva has a different name for purchaser in the English Translation); apparent copying and pasting of the original G-Auto Sales Inc. seal and stamp onto the translations; failure to identify the translator of the documents; absence of certification from a translator; and the like. Over 10,000 pages of documents were produced during discovery in the Federal litigation

involving Kapustin and the Respondents, during which time these documents were not produced by either party, raising the strong indication that these were created now for the purposes of this litigation.

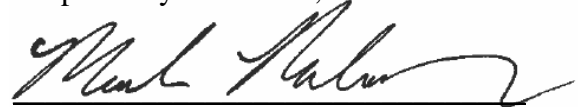
Additionally, and in that Respondents' Reply of July 26, 2016 relies heavily on the "Kapustin Affirmation" in support of Respondents' motion (also for the first time), and in light of the fact that said affirmation was not filed by Kapustin until July 13, 2016 (which was *after* Complainants' filing of their Response to the Motion for Judgment on the pleadings, said filing having been made on June 24, 2016, it is submitted that Complainants have not had the opportunity to respond to the statements made by Respondents regarding the Kapustin Affirmation within the context of Respondents' Motion for Judgment on the Pleadings.

In closing, all of the foregoing would be fully briefed should the Presiding Officer grant leave to file a Sur-Reply.

WHEREFORE, it is respectfully requested that Complainants' motion for leave to file a sur-reply be granted in its entirety.

Dated: August 24, 2016
Brooklyn, New York

Respectfully Submitted,

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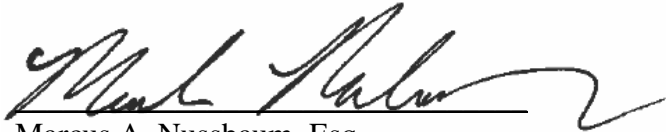
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CERTIFICATE OF SERVICE

I hereby certify that I have this day served the **COMPLAINANTS' MOTION FOR LEAVE TO FILE SUR-REPLY TO RESPONDENTS' MOTION FOR JUDGMENT ON THE PLEADINGS** upon Respondents' Counsel at the following address:

Nixon Peabody LLP
Attn: Eric C. Jeffrey, Esq.
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Washington, DC 20001-4501

by first class mail, postage prepaid, and by email (ejeffrey@nixonpeabody.com).

A handwritten signature in black ink, appearing to read "Marcus A. Nussbaum", written over a horizontal line.

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Dated: August 24, 2016 in Brooklyn, New York.